

## TENNESSEE AUCTIONEER COMMISSION

The Tennessee Auctioneer Commission held its meeting August 6, 2007, Room 640, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee. Those present for the meeting were Bobby Colson, Chairperson; Kenneth Dreaden, Vice Chairperson; Howard Phillips, Board Member; Marvin Alexander, Board Member; Mary Frances Rudy, Board Member; Adrian Chick, Staff Attorney; Lynn McGill, Administrative Director; Sheila Piper, Administrative Assistant; State Representative Judd Matheny and members of the Tennessee Auctioneer Association.

Motion was made by Howard Phillips and seconded by Mary Frances Rudy to adopt agenda. Motion carried. No opposition.

Minutes from the meeting of May 2007 were presented to the Commission Members for approval. Motion was made by Howard Phillips and seconded by Mary Frances Rudy to approve said minutes. Motion carried. No opposition.

Staff Attorney stated, "I would like to put on record that the statutory requirement of the 2 year apprenticeship cannot be waived by this Commission."

Motion was made by Marvin Alexander and seconded by Howard Phillips to approve the auctioneer application of E. Peter Spatz. Motion carried. No opposition.

Motion was made by Howard Phillips and seconded by Mary Frances Rudy to approve the apprentice application of Gary Nugent. Motion carried. No opposition.

Motion was made by Marvin Alexander and seconded by Kenneth Dreaden to approve the auctioneer application of Chuck McCarter. Motion carried. Howard Phillips abstained.

Steve Holt appeared before the Commission Members to request waiver of apprenticeship. After review of applicant's experience, motion was made by Howard Phillips and seconded by Kenneth Dreaden to approve application. Mr. Holt to obtain 30 hours of qualifying education from an approved school, take and pass the auctioneer exam. Motion carried. No opposition.

Bobby Hilton appeared before the Commission Members. After a lengthy discussion, motion was by made Howard Phillips and seconded by Marvin Alexander to deny waiver of apprenticeship. Motion carried. No opposition.

Sheila Piper presented a letter to the Commission Members from Jerry Clifton requesting late penalties be waived. Motion was made by Kenneth Dreaden and seconded by Marvin Alexander to waive the penalties. Motion carried. No opposition.

Motion was made by Marvin Alexander and seconded by Howard Phillips to deny the application of Grand Ole Auction House for one year from the date the Consent Order was paid. Motion carried. No opposition.

Marvin Alexander requested that staff inform the National Auctioneer Association that we do not need the social security number for continuing education.

Rhess Orr appeared before the Commission Members to discuss PSI, the contractor that administers our exams.

Administrative Director informed the Commission Members that PSI is scheduled to edit test questions with Commission Members on August 7, 2007.

Staff Attorney presented the following complaints to the Commission Members.

**200704944.** Maury City Auction House.

Matter presented to close. Consent Order paid.

Motion was made by Howard Phillips and seconded by Marvin Alexander to take Legal's recommendation to close. Motion carried. No opposition.

**2200706064.** Robert Atlas.

Complaint: A non-profit charity organization in Tennessee coordinated an auction in which the auctioneer would bring artwork to be sold. The charity received 20% of the sales proceeds. Neither the company supplying the artwork nor the auctioneer was licensed in Tennessee. The auction occurred in December 2004. This complaint was filed in April 2007.

Response: The Respondent assumed that, because the proceeds were benefiting a charity, no license was required. Respondent apologizes for the misunderstanding and states no other auctions of this type have been held in Tennessee.

Motion was made by Kenneth Dreaden and seconded by Howard Phillips to take Legal's recommendation to send a Letter of Warning and close. Motion carried. No opposition.

**200706067.** Ross Galleries.

Complaint: A non-profit charity organization in Tennessee coordinated an auction in which the Respondent company would supply artwork and an auctioneer to be sold. The charity received 20% of the sales proceeds. Neither the company supplying the artwork nor the auctioneer was licensed in Tennessee. The auction occurred in December 2004. This complaint was filed in April 2007.

Response: The Respondent assumed that, because the proceeds were benefiting a charity, no license was required. Respondent apologizes for the misunderstanding and states no other auctions of this type have been held in Tennessee.

Motion was made by Kenneth Dreaden and seconded by Howard Phillips take to Legal's recommendation to send a Letter of Warning and close. Motion carried. No opposition.

**200706303.**

Complaint: Information was received that the respondent would be conducting an auction the following morning (Saturday) and that he might be selling motor vehicles without an auctioneer license. Investigations were unable to attend the auction due to short notice.

Motion was made by Marvin Alexander and seconded by Kenneth Dreaden for Legal to send a letter to find out more information concerning this auction. Motion carried. No opposition.

**200705361.**

Complaint: The Respondent placed an advertisement in a local newspaper for the auction of real property (respondent was not the owner). The advertisement stated in part, "HOME FOR AUCTION", and "Home will be sold Sun. night, March 4 to highest and best bidder." The Respondent is not a licensed auctioneer.

Response: The Respondent states that it was not really an auction, but more of an "open house", and that he did not intend to advertise it as an auction.

Motion was made by Marvin Alexander and seconded by Howard Phillips take Legal's recommendation to issue a Consent Order assessing civil penalty of \$500 and authorization to schedule for formal hearing. Motion carried. No opposition.

**2007056951.**

Complaint: Complaint alleges that the Respondent conducted auctions during a time that the Respondent's auctioneer license was expired. An investigation revealed that at least two auctions had been conducted by the Respondent.

Response: The Respondent initially stated that the auctions were "benefit" auctions for two different individuals. The Respondent later stated that only one of the auctions had taken place, and gave names inconsistent with her first statement. Motion was made by Howard Phillips and seconded by Kenneth Dreaden to take Legal's recommendation to issue a Consent Order assessing a civil penalty of \$500 and authorization to schedule for hearing. The Respondent failed to establish the auctions were exempted by statute. Motion carried. No opposition.

**200705318.**

Complaint: Complaint alleges that the Respondent is conducting auctions without a license. Additionally, the complainant alleges that the Respondent is falsely representing the expiration date of items of food for sale. An investigation resulted in a sworn statement by the Respondent in which he admitted to conducting auctions without a license on Saturday and Monday nights for the past four months.

Response: Respondent admitted unlicensed conduct and that he was aware that a license was required. Respondent also stated that he made approximately \$100 to \$150 profit at each auction.

Motion was made by Kenneth Dreaden and seconded by Marvin Alexander to take Legal's recommendation to issue a Consent Order assessing civil penalty of \$100 for each of thirty (30) auctions (total \$3,000.00) and authorization to schedule for formal hearing. Motion carried. No opposition.

**200705731. Auction Services Group.**

Complaint: Complaint alleges an advertising violation due to an advertisement that does not list a firm or license number.

Response: Respondent states that this was a sealed bid auction, and that it inadvertently failed to mention this in the ad. The respondent immediately corrected the ad after being contacted.

Motion was made by Howard Phillips and seconded by Mary Frances Rudy to take Legal's recommendation to close without further action. Motion carried. No opposition.

**200706096.**

Complaint: Complaint is based upon a breach of contract action filed against the Respondent by the complainant. In this action, the complainant alleges that the Respondent auction firm wrongfully released earnest money to the seller after the complainant refused to proceed with closing. The parties executed a "Contract for Sale of Real Estate". This contract stated that the "Property sells "as is, where is". Under the title, "Consideration", a handwritten provision reads, "estate to clean up junk, disc, seed & sow before closing." The contract states that the buyer forfeits the earnest money if it fails to close according to the contract and that the Respondent may deduct its commission and return the remainder to the seller. This matter is currently being litigated in civil court.

Motion was made by Marvin Alexander and seconded by Kenneth Dreaden to take Legal's recommendation to defer pending outcome of civil litigation. Motion carried. No opposition.

**200706389. Total Auction.**

Complaint: Complaint was opened by the Commission due to a discrepancy between the gallery address reported to the Commission and the gallery address noted in an advertisement. Response: This was an oversight on the part of the Respondent and he has submitted an application for address change.

Motion was made by Mary Frances Rudy and seconded by Howard Phillips to take Legal's recommendation to dismiss. Motion carried. No opposition.

**200706432. Marvin Alexander, reviewer.**

Complaint: Complaint was opened in response to an ad which reads "AUCTION" at the top, and directly underneath, lists a realty company and firm number. The ad gives the impression that the realty company is a licensed auction firm.

Response: The Respondent states the ad was prepared in error, and that the firm number listed was the real estate firm number, and should not have been placed on the ad. The Respondent also addresses issues relating to the Real Estate Commission.

Motion was made by Kenneth Dreaden and seconded by Bobby Colson to send Letter of Instruction, issue a Consent Order in the amount of \$250 and refer to Real Estate Commission. Motion carried. No opposition.

**200706522.**

Complaint: Complaint alleges that the Respondent advertised an auction without being a licensed auctioneer and without providing a license number on the ad.

Response: The Respondent states that the auction was conducted solely at the direction of, and under the control of the sellers, and that he made no commission from the auction. The Respondent admits, however, that the advertisement is a violation and states that he attempted to correct the advertisement immediately.

Motion was made by Kenneth Dreaden and seconded by Howard Phillips to issue Consent Order assessing civil penalty in the amount of \$500 for advertising violation and refer to Real Estate Commission for possible violation of their rules. Motion passed. No opposition.

**200706008. Bob Parks Auction.**

Complaint: Complaint alleges that the Respondent advertised an auction for land that the complainant formerly owned. The advertisement referred to the land as "The [complainant's father's name] Farm". The complainant is offended that the name of her father, who is now deceased, was used to describe the land.

Response: The Respondent states that the land, which is a farm, had been occupied by the complainant's family for approximately 60 years, and that the former name was

used in the ad simply because that's how it is known in the community. Motion was made by Howard Phillips and seconded by Kenneth Dreaden to take Legal's recommendation and dismiss. Motion carried. No opposition.

**200706523.**

Complaint: Complainant alleges that he entered into a written contract with the respondent for an absolute auction. However, the respondent failed to sell the item to the highest bidder. Additionally, the respondent damaged the item and misrepresented year model during the auction.

Response: The respondent states that although there was a written "no reserve contract", the complainant asked for a reserve prior to the auction and that the item was not sold because the reserve was not met.

Motion was made by Howard Phillips and seconded by Mary Frances Rudy to take Legal's recommendation of authorization to schedule formal hearing. Motion carried. No opposition.

**200706516.**

Complaint: The Respondents are unlicensed individuals. The following is taken verbatim from their advertisement:

"When you hire [us] to help you with your auction, we will do an advertising blitz consisting of signs, newspaper ads that we will create for you and internet marketing on our website. We will field all calls. We will come to your property with an auction truck, as well as all tools and personnel for a successful auction. We handle everything from A to Y to help you with your auction. You handle Z, dropping the hammer and accepting the high bid. You simply drop the hammer. You are in charge of your auction."

Additionally, the Respondents placed an advertisement for an auction

Tenn. Code Ann. § 62-19-102 makes it unlawful for any person to "act as, or advertise or represent to be, an auctioneer, apprentice auctioneer, or firm without holding a valid license issued by the commission." Section 62-19-101 defines "auctioneer" as follows "Auctioneer" means any individual who, for a fee, commission, or any other valuable consideration, or with the intention or expectation of receiving the same, by the means or process of auction or sale at auction, offers, negotiates, or attempts to negotiate a listing contract, sale, purchase, or exchange of goods."

Motion was made by Howard Phillips and seconded by Kenneth Dreaden to issue a Consent Order assessing civil penalty in the amount of \$2,500 against each of the two owners of this business for unlicensed practice. Motion carried. No opposition.

**200705844. Dave Fall.**

Complaint: Complaint alleges that the Respondent damaged various items of personal property while gathering them for an auction and that the Respondent has stolen certain furniture.

Response: The Respondent admits that one item was damaged, and the item was replaced. The Respondent has no knowledge of other damaged items. Some items had a reserve and were not sold, so they were loaded in Respondent's truck. The items are too heavy for one person to lift, and the complainant had been advised that the items may be picked up at any time.

Motion was made by Bobby Colson and seconded by Howard Phillips to close with a Letter of Instruction. Motion carried. No opposition.

**200706488. Tays R & A.**

Complaint: The complainant alleges that false bidders would be present at a certain auction. The auction was attended by an investigator who found no evidence of false bidders.

Motion was made by Kenneth Dreaden and seconded by Howard Phillips to take Legal's recommendation to dismiss. Motion carried. No opposition.

**200706080.**

Complaint: Complaint alleges that the respondent, a licensed auctioneer, fraudulently converted proceeds of sales for her own benefit by forging checks. An investigation has been unable to locate the respondent.

Motion was made by Howard Phillips and seconded by Kenneth Dreaden to take Legal's recommendation of authorization to schedule formal hearing.

**200706858.**

Complaint: Complaint alleges that the Respondent is operating an auction house without a gallery license.

Response: The Respondent admits the above violation and states that "we do use ignorance as an excuse."

Motion was made by Marvin Alexander and seconded by Howard Phillips to issue Consent Order assessing civil penalty of \$500 for unlicensed conduct and authorization to schedule formal hearing. Motion carried. No opposition.

**200604033. Nashville Powersport Auction.**

Complaint: Complaint was opened regarding a possible commingling of escrow funds, and to determine whether contracts are "absolute" contracts.

Motion was made by Marvin Alexander and seconded by Kenneth Dreaden to dismiss. No violations were revealed during investigation. Motion carried. No opposition.

Minutes

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August 6, 2007

Election of officers was held. Motion was made by Marvin Alexander and seconded by Howard Phillips to nominate Kenneth Dreaden as Chairperson and Howard Phillips as Vice-Chairperson. Motion carried. No opposition.

Motion was made by Marvin Alexander and seconded by Kenneth Dreaden to adopt Robert's Rules of Order. Motion carried. No opposition.

There being no further business, meeting adjourned.



APPROVED:

Kenneth Dreaden  
Chairperson

Howard Phillips  
Vice-Chairperson

Mary Frances Rudy  
Commission Member

Marvin Alexander  
Commission Member

Bobby Colson  
Commission Member